



**Ocharo v Kenya Film Classification Board (Cause E909 of 2024)
[2025] KEELRC 802 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 802 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E909 OF 2024
S RADIDO, J
MARCH 13, 2025**

BETWEEN

VICKY KEMUNTO OCHARO CLAIMANT

AND

KENYA FILM CLASSIFICATION BOARD RESPONDENT

RULING

1. Vicky Kemunto Ocharo (the Claimant) sued the Kenya Film Classification Board (the Respondent) on 25 October 2024, alleging unfair termination of employment, breach of contract and discrimination.
2. The Claimant also filed a Motion under a certificate of urgency seeking orders:
 - i. ...
 - ii. ...
 - iii. That pending the hearing and determination of this Claim, the vacancy of Manager Human Resource Management and Administration, flowing from the Claimant/applicant's dismissal shall remain vacant and the Respondent shall by itself, servants, agents, associates, parent ministry or other source not advertise, recruit, select, second or appoint another person with respect to that vacancy and position.
 - iv. That pending the hearing and determination of this Claim, the Respondent shall furnish the Claimant/applicant with documents listed in her supporting affidavit and marked VKO – 5.
 - v. That this Claim be certified as urgent and the hearing be given priority.
 - vi. That this Honourable Court makes such other orders as are just and fair in the interests of justice.
 - vii. That the costs of this application be provided for.



3. The main grounds in support of the Motion were that the Respondent had summarily dismissed the Claimant on 30 September 2024; the disciplinary process was irregular and tainted; the Claimant had been sent on compulsory leave without contractual authority; the allegations leading to the dismissal had been approved or made by the Chief Executive Officer and members of the Human Resource Advisory Committee; the Respondent had denied the Claimant access to documents necessary to prepare a response to the allegations; a junior officer had done the investigations; the Cabinet Secretary, Public Service had decreed a suspension of recruitment in the public service and that the interests of justice required grant of the orders sought.
4. The Court gave directions on the Motion on 28 October 2024 and 5 November 2024.
5. Consequently, the Respondent filed a Notice of Preliminary Objection on 21 November 2024, contending that:
 - i. This Honourable Court lacks jurisdiction to entertain this claim pursuant to sections 11.2.3 and 11.2.4 of the Kenya Film Classification Board Human Resource Policy and Procedures Manual, 2018 (HR Manual) and section 9(2) of the *Fair Administrative Action Act*.
 - ii. The Claim herein is inadmissible and unenforceable for non-exhaustion of internal remedies.
6. On 22 November 2024, the Respondent filed a replying affidavit sworn by the acting Chief Executive Officer.
7. The acting Chief Executive Officer deponed in the affidavit that the Motion was an abuse of the court process and lacked merit; the Board had resolved that the Audit Manager investigate allegations against the Claimant; during investigations, the Claimant was directed to proceed on leave; an investigations report was given to the Board on 14 May 2024 leading to a show cause on 29 May 2024; the Claimant was granted access to her office to get documents to assist in her defence; the Claimant attended a disciplinary hearing with an advocate and witnesses; the disciplinary process complied with the Human Resource policy which allowed a direct appeal to the Public Service Commission; the Claimant had failed to appeal; the Claimant had admitted irregularly reinstating an employee dismissed for presenting fake certificates; the Claimant had issued acting appointment letters and transferred staff without approval of the Board; damages would be sufficient remedy and that the balance of convenience tilted in favour of not granting the orders prayed for.
8. The Claimant filed Grounds of Opposition to the Notice of Preliminary Objection on 27 January 2025, asserting that:
 - i. The Claim falls under the exemption to the exhaustion doctrine.
 - ii. The Respondent breached section 11.4(j) of the KFCB Human Resource Policy and Procedures Manual and also the *Fair Administrative Action Act*.
 - iii. The Respondent cannot now be heard to object to exhaustion doctrine, having not offered an appeal in the dismissal letter dated 30th September 2024, because she will be benefitting from her own wrongdoing and breach of the guiding principles and the law.
 - iv. He who comes to equity must come with clean hands.
 - v. The notice is an abuse of court process.
 - vi. It is in the interest of justice that the notice be dismissed with costs.
 - vii. Any other and/or further grounds to be adduced at the hearing.



9. When the parties appeared in Court on 27 January 2025, the Claimant applied to withdraw the Motion. The Court acceded to the request thus paving way for the determination of the Notice of Preliminary Objection.
10. The Respondent filed its submissions on the Objection on 12 February 2025, and the Claimant on 25 February 2025.
11. The Court has considered the Statement of Claim, Notice of Preliminary Objection, Grounds of Opposition and submissions.
12. The Respondent's Human Resource Policy provides where material:
 - 11.2.3 All appeals on disciplinary matters falling under the purview of the Board shall lie to the Public Service Commission (PSC) or as otherwise delegated.
 - 11.2.4 Any such appeal (to the CEO or Board or Public Service Commission) shall be in writing within six (6) weeks from the date of the letter conveying the disciplinary decision.
13. To advance the Preliminary Objection, the Respondent cited section 9(2), (3) and (4) of the Fair Administrative Act and *R v Kenyatta University ex parte Ochieng Orwa Dominic & 7 Ors* (2018) eKLR to assert that unless exceptional circumstances were demonstrated, it was not open to the Court to assume jurisdiction before exhaustion of alternative dispute resolution avenues (other authorities were cited).
14. The Claimant did not deny that under the Human Resource Policy, she had the option to appeal to the Public Service Commission.
15. The Claimant argued that the Respondent cannot take advantage of the exhaustion of the internal dispute resolution avenue because the Respondent did not inform her of a right of appeal to the Public Service Commission in the dismissal letter as required by section 11.15.4 of the Human Resource Policy and Procedures Manual providing that an employee shall be informed of a right of appeal within 6 weeks of a dismissal.
16. The Claimant cited *John Kipkoech Rotich & 29 Ors v Drinks Regulation Committee ex parte John Kipkoech Rotich t/a Silent Pub & 29 Ors* (2019) eKLR for the proposition that a party could not benefit from his wrongdoing.
17. The Claimant also cited *Muka & Ar v Malala & 12 Ors; Commission for University Education 2 Ors (Interested Parties)*, (2022) KEHC 10131 (KLR), to contend that the Court could assume jurisdiction in exceptional circumstances and that the exceptional circumstances in the case were that the Respondent had not informed her of a right of appeal and that time for appeal had lapsed.
18. The Respondent has invoked the aid of the *Fair Administrative Action Act* in support of the Preliminary Objection.
19. In the Court's view, it is legally doubtful whether the decision of the Respondent to dismiss the Claimant and the appeal process could amount to an administrative action as contemplated under the Act.
20. The jury is still out on whether a disciplinary process and action by an employer in ordinary employment can meet the threshold of an administrative action.



21. The Claimant was a professional human resource practitioner. She was the custodian and enforcer of the human resource function and it can be assumed that she knew her rights even without a reminder from the Respondent.
22. However, the instrument defining the rights and obligations of the Claimant and the Respondent placed a positive obligation on the Respondent to notify the Claimant of a right of appeal. The Respondent failed to fulfil that obligation with the consequence that the period for lodging an appeal with the Public Service Commission lapsed.
23. On that narrow ground, the Court is disinclined to allow the Notice of Preliminary Objection.

Orders

24. In light of the above, the Notice of Preliminary Objection is dismissed.
25. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mercy Kareithi & Co. Advocates

For Respondent Muga & Muga Associate Advocates

Court Assistant Wangu

